members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 15, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–30437 Filed 12–22–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2009–0119]

Surface Transportation Project Delivery Pilot Program; Caltrans Audit Report

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comment.

SUMMARY: Section 6005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) established the Surface Transportation Project Delivery Pilot Program, codified at 23 U.S.C. 327. To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates semiannual audits during each of the first 2 years of State participation. This notice announces and solicits comments on the fourth audit report for the California Department of Transportation (Caltrans).

DATES: Comments must be received on or before January 22, 2010.

ADDRESSES: Mail or hand deliver comments to Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590. You may also submit comments electronically at *http://www.regulations.gov,* or fax comments to (202) 493–2251.

All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70, Pages 19477–78) or you may visit *http://DocketsInfo.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Ruth Rentch, Office of Project Development and Environmental Review, (202)–366–2034, *Ruth.Rentch@dot.gov*, or Mr. Michael Harkins, Office of the Chief Counsel, (202) 366–4928, *Michael.Harkins@dot.gov*, Federal Highway Administration, Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the Office of the Federal Register's home page at *http://www.archives.gov* and the Government Printing Office's Web site at *http://www.access.gpo.gov*.

Background

Section 6005 of SAFETEA–LU (codified at 23 U.S.C. 327) established a pilot program to allow up to five States to assume the Secretary of Transportation's responsibilities for environmental review, consultation, or other actions under any Federal environmental law pertaining to the review or approval of highway projects. In order to be selected for the pilot program, a State must submit an application to the Secretary.

On June 29, 2007, Caltrans and FHWA entered into a Memorandum of Understanding (MOU) that established the assignments to and assumptions of responsibility to Caltrans. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under the National Environmental Policy Act, as well as the FHWA's responsibilities under other Federal environmental laws for most highway projects in California.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) requires the Secretary to conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The results of each audit must be presented in the form of an audit report and be made available for public comment. This notice announces the availability of the fourth audit report for Caltrans and solicits public comment on same.

Authority: Section 6005 of Pub. L. 109–59; 23 U.S.C. 315 and 327; 49 CFR 1.48.

Issued on: December 15, 2009.

Victor M. Mendez,

Administrator.

Surface Transportation Project Delivery Pilot Program

Federal Highway Administration Audit of California Department of Transportation, July 27–31, 2009

Introduction

Overall Audit Opinion

Based on the information reviewed, it is the Federal Highway Administration (FHWA) audit team's opinion that as of July 31, the California Department of Transportation (Caltrans) has continued to make progress toward meeting all responsibilities assumed under the Surface Transportation Project Delivery Pilot Program (Pilot Program), as specified in the Memorandum of Understanding (MOU) [1] with FHWA and in the Caltrans Application for Assumption (Application).

With the completion of FHWA's fourth audit, Caltrans has been operating under the Pilot Program for 2 years. In compliance with the time specifications for the required audits, FHWA has completed the four semiannual audits in the first 2 years of State participation. As required under the Pilot Program, FHWA audits of Caltrans will now be on an annual basis. During the four audits conducted, the audit team has completed on-site audits at 9 of the 12 Caltrans Districts and the remaining Districts were within the scope of the Caltrans Regional Offices that were audited. The audit team continues to identify significant differences across the Districts in terms of the Pilot Program. Examples of such differences include: Resource availability and allocation; methods of implementation; processes and their improvement; and progress toward meeting all commitments. It is the audit team's opinion that the highly decentralized nature of Caltrans' operations is a major contributing factor to the variation observed. The decentralized nature of the organization necessitates clear, consistent, and ongoing oversight by Caltrans Headquarters over Districts' implementation and operation of the

[1] Caltrans MOU between FHWA and Caltrans available at: *http://environment.fhwa.dot.gov/strmlng/safe_cdot_pilot.asp.*

Pilot Program. A robust oversight program will help foster the exchange of information and the sharing of best practices and resources between Districts and will put the entire organization in a better position to more fully implement all assumed responsibilities and meet all Pilot Program commitments.

The FHWA commends Caltrans for its implementation of corrective actions in response to previous audit findings. However, these corrective actions and ''fixes'' have been put into practice on a case-by-case basis. The FHWA recommends that Caltrans develop a departmentwide, holistic corrective action management approach and system that will develop and implement an internal process review to determine needed improvements to existing processes and procedures.

Due to the multiyear timeframes associated with more complex and controversial projects, the full lifecycle of the environmental review aspect of project development (proceeding from initiation of environmental studies and concluding with the issuance of a record of decision or equivalent decision document) has yet to be fully realized within the period of the Pilot Program. Over the past 2 years, the FHWA California Division has continued to execute the FHWA role for 22 project reviews and decisions excluded from the Pilot Program. Caltrans continues to gain experience in understanding the resource requirements and processes necessary to administer its Pilot Program. It is the audit team's opinion that Caltrans needs to continue to refine its approaches and resources to meet all Pilot Program commitments, especially given the likelihood of increasing resource demands associated with exclusively managing ever-more complex and controversial projects under the Pilot Program.

During the on-site audit, Caltrans staff and management continued to express ongoing interest in receiving feedback from the FHWA audit team related to program successes and areas in need of improvement. By addressing all findings in this report, Caltrans will continue to move its program toward full compliance with all assumed responsibilities and meeting all Pilot Program commitments.

Limitations of the Audit

The conclusions presented in this report are opinions based upon interviews of selected persons knowledgeable about past and current activities related to the execution of the Pilot Program at Caltrans, and a review of selected documents over a limited time period. The FHWA audit team's ability to conduct the audit and make determinations of Caltrans successful participation in having met its commitments under the Pilot Program during the four audits conducted have been further limited by the following:

- Not every District was audited. Each audit (including this audit) consisted of visits to selected Caltrans Districts.
- Incomplete project files. Project files and associated project documentation have, when reviewed, not always been complete (i.e., a full administrative record was not always available for review by the auditor team). This is especially true for projects where the project or related studies were initiated prior to commencement of the Pilot Program.
- The limited scope of Pilot Program activity to date conducted by Caltrans. Since Caltrans has not been operating under the Pilot Program for the period of time that is generally agreed to be required to complete the full lifecycle of most Environmental Impact Statements (EIS) and other complex projects, FHWA is not yet able to fully determine how Caltrans complies with all the responsibilities assumed in those project situations.
- Insufficient data to determine time savings. Similarly, it is too early in Caltrans' participation in the Pilot Program, and there is not enough data available, for FHWA to be able to report conclusively on time savings being achieved as a result of Caltrans participation in the Pilot Program.
- Lack of ability to view legal comments provided by Caltrans staff attorneys. As in prior audits, Caltrans did not permit access to its attorneys' written comments on assigned environmental documents. The inability to document the existence (not the substance) of such comments has made it difficult for the audit team to determine if the legal sufficiency process is being implemented in an effective—as opposed to a timely—manner. While recognizing Caltrans' expressed concerns about the attorney-client privilege and acknowledging the dialogue that has taken place regarding these concerns and the appropriate documentation of this process, the audit team, mindful of the provisions of 23 CFR 1.5 as well as sections 8.1.6, 8.2.2, and 8.2.4 of the MOU, is considering whether documentation beyond the timeline provided by Caltrans Legal Division's Legal Information Computer System database and individual findings of legal sufficiency is necessary for FHWA to evaluate fully Caltrans' compliance with these requirements.
- Distinction between the two Categorical Exclusion (CE) assumption processes. Since the assumption by Caltrans of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU, Pub L. 109–59) Section 6004 CE process is not a part of these audits, it is not possible to validate the correctness of determinations placing individual CEs under the aegis of each assumed responsibility.
- Continued errors in the quarterly reports. Since the quarterly reports continue to contain errors, it is difficult to have confidence that all National Environmental Policy Act (NEPA) documents have been reported and thus can be part of the FHWA audit plans.

Background

The SAFETEA–LU Section 6005(a) established the Pilot Program, codified at title 23, United States Code, section 327. The Pilot Program allows the Secretary of Transportation (Secretary) to assign, and the State to assume, the Secretary's responsibilities under NEPA for one or more highway projects. Upon assigning NEPA responsibilities, the Secretary may further assign to the State all or part of the Secretary's responsibilities for environmental review, consultation, or other action required under any Federal environmental law pertaining to the review of a specific highway project. When a State assumes the Secretary's responsibilities under this program, the State becomes solely responsible and is liable for carrying out the responsibilities it has assumed, in lieu of the FHWA.

To ensure compliance by each State participating in the Pilot Program, 23 U.S.C. 327(g) mandates that FHWA, on behalf of the Secretary, conduct semiannual audits during each of the first 2 years of State participation; and annual audits during each subsequent year of State participation. The focus of the FHWA audit process is fourfold: (1) To assess a Pilot State's compliance with the required MOU and applicable Federal laws and policies, (2) to collect information needed to evaluate the success of the Pilot Program, (3) to evaluate Pilot State progress in meeting its performance measures, and (4) to collect information for use in the Secretary's annual report to Congress on the administration of the Pilot Program. Additionally, 23 U.S.C. 327(g) requires FHWA to present the results of each audit in the form of an audit report that is published in the **Federal Register**. This audit report must be made available for public comment, and FHWA must respond to public

comments received no later than 60 days after the date on which the period for public comment closes.

Caltrans published its Application under the Pilot Program on March 14, 2007, and made it available for public comment for 30 days. After considering public comments, Caltrans submitted its Application to FHWA on May 21, 2007, and FHWA, after soliciting the views of Federal agencies, reviewed and approved the Application. Then on June 29, 2007, Caltrans and FHWA entered into an MOU that established the assignments to and assumptions of responsibility to Caltrans, which became effective July 1, 2007. Under the MOU, Caltrans assumed the majority of FHWA's responsibilities under NEPA, as well as FHWA's responsibilities under other Federal environmental laws for most highway projects in California. Caltrans' participation in the Pilot Program is effective through August 2011 (23 U.S.C. 327(i)(1)).

Scope of the Audit

This is the fourth FHWA audit of the Caltrans Pilot Program. The on-site portion of the audit was conducted in California from July 27 through July 31, 2009. As required in SAFETEA–LU, each FHWA audit must assess compliance with the roles and responsibilities assumed by the Pilot State in the MOU. The audit also includes recommendations to assist Caltrans in administering a successful Pilot Program.

The audit primarily focused on the continued review of compliance with assumed responsibilities.

Prior to the on-site audit, FHWA conducted telephone interviews with Federal resource agency staff at the U.S. Army Corps of Engineers (USACE), the U.S. Fish and Wildlife Service (USFWS), the National Park Service, the National Oceanic and Atmospheric Administration and the Environmental Protection Agency regional office in California. The on-site audit included visits to the Caltrans Offices in District 5 (San Luis Obispo), District 7 (Los Angeles), District 11 (San Diego), and District 12 (Irvine). Additionally, Caltrans legal staff was interviewed in Sacramento and USACE office in Irvine was visited.

This report documents findings within the scope of the audit as of the completion date of the on-site audit on July 31, 2009.

Audit Process and Implementation

The intent of each FHWA audit completed under the Pilot Program is to ensure that each Pilot State complies with the commitments in its MOU with FHWA. The FHWA does not evaluate specific project-related decisions made by the State because these decisions are the sole responsibility of the Pilot State. However, the FHWA audit scope does include the review of the processes and procedures (including documentation) used by the Pilot State to reach project decisions in compliance with MOU section 3.2.

In addition, Caltrans committed in its Application (incorporated by reference in MOU section 1.1.2) to implement specific processes to strengthen its environmental procedures in order to assume the responsibilities assigned by FHWA under the Pilot Program. The FHWA audits review how Caltrans is meeting each commitment and assesses Pilot Program performance in the core areas specified in the *Scope of the Audit* section of this report.

The Caltrans' Pilot Program commitments address:

- Organization and Procedures under the Pilot Program
- Expanded Quality Control Procedures
- Independent Environmental Decisionmaking
- Determining the NEPA Class of Action
- Consultation and Coordination with Resource Agencies
- Issue Identification and Conflict Resolution Procedures
- Record Keeping and Retention
- Expanded Internal Monitoring and Process Reviews
- Performance Measures to Assess the Pilot Program
- Training to Implement the Pilot Program
- Legal Sufficiency Review.

The FHWA team for the fourth audit included representatives from the following offices or agencies:

- FHWA Office of Project Development and Environmental Review
- FHWA Office of the Chief Counsel
- FHWA Alaska Division Office
- FHWA Resource Center Environmental Team
- Volpe National Transportation Systems Center
- USFWS.

During the onsite audit, FHWA interviewed 80 staff from the Caltrans four District offices, Caltrans legal staff, and the USACE. The audit team interviewed a cross-section of staff including top senior managers, senior environmental planners, generalists, associate planners, and technical experts. The audit team also reviewed project files and records for over 45 projects managed under the Pilot Program.

The FHWA acknowledges that Caltrans identified specific issues during its fourth self-assessment performed under the Pilot Program (required by MOU section 8.2.6), and has established processes to address most issues. Some issues described in the Caltrans self assessment may overlap with FHWA findings identified in this audit report.

In accordance with MOU section 11.4.1, FHWA provided Caltrans with a 30-day comment period to review this draft audit report. The FHWA reviewed comments received from Caltrans and revised sections of the draft report, where appropriate, prior to publishing it in the **Federal Register** for public comment.

Status of Findings Since Last Audit

As part of the fourth audit, FHWA evaluated the corrective actions implemented by Caltrans in response to the audit findings in the third audit report.

Most of the compliant findings in the third audit report involved specific processes and procedures of the North and Central Region offices. As these offices were not visited during this fourth audit, we cannot report on the continuance of their compliance.

The FHWA reviewed the current status of ''Deficient'' and ''Needs Improvement'' audit findings identified during the third FHWA audit in January 2009.

''Deficient'' audit findings status:

1. *Quarterly Reports*—The quarterly reports Caltrans provides to FHWA under section 8.2.7 of the MOU continue to include an inaccurate listing of all approvals and decisions under the Pilot Program. This continued area of deficiency was also reported by Caltrans in their fourth self assessment.

2. *Performance Measure—''Monitor relationships with Federal and State resource agencies''*—Caltrans reported in its fourth self-assessment that a survey was conducted in early 2009 with those Federal and State resource agencies that it works with on Pilot Program projects.

3. *Delegation of Signature Authority*—This issue has been rectified through issuance of clarifying direction to staff.

4. *Assignment of Section 6002 Responsibility under the Pilot Program*—Caltrans has revised its *Standard Environmental Reference* (SER) to correct and clarify the template letters for inviting cooperating and participating agencies to participate in an EIS project, as per section 6002 of SAFETEA–LU.

''Needs Improvement'' audit findings:

1. *Quality Assurance/Quality Control (QA/QC) Certification Process*—Ongoing improvement was observed in the completion of the QC certification forms. Nevertheless incorrect and incomplete QC certification forms were still identified.

2. *Self Assessment and Process Reviews*—As per the suggestion of this finding, the Caltrans fourth self assessment included review of ongoing projects as well as completed projects.

3. *Air Quality Conformity Determinations*—The project files reviewed during the fourth audit contained the necessary FHWA air quality conformity determination documentation, where applicable.

4. *Project Files/Uniform File System (UFS)*—Some project files reviewed during this audit met the requirements of Section 8.2.4 of the MOU and SER Chapter 38 while other files reviewed did not meet these requirements.

5. *Commitment of Resources*—Inconsistencies continued to be observed with regard to charging time spent on pilot program activities to the official Pilot Program code (6DELE).

6. *Training on Air Quality Conformity*—Caltrans reported in its fourth self assessment that Air Quality training has been offered and is to be provided in the upcoming training plan.

7. *Assignments under the Pilot Program*—Caltrans staff interviewed indicated a better understanding of the SAFETEA–LU Section 6002 (23 U.S.C. 139) environmental review process requirements than indicated in the third audit.

8. *Performance Measure—''Monitor relationships with the general public''*—The fourth Caltrans self assessment reported a new process for monitoring this performance measure had been implemented. Monitoring of how the relationships are evolving is now being conducted.

9. *Documentation of Class of Action Determination*—For projects initiated under the Pilot Program, project files for class of action determination reviewed during the fourth audit, contained this documentation.

10. *Local Assistance Training Plan*—This finding was not revisited as to its status during the fourth audit.

Effective Practices

The FHWA audit team observed the following effective practices during the fourth audit:

1. One Caltrans District training coordinator implemented a system to capture and track which employees in that district completed online training courses by creating and assigning a unique billing code for time spent taking such courses. This training coordinator then manually input this information into an employee's training plans.

2. In some Districts, electronic files are set up and organized to mirror the UFS headings.

3. In one Caltrans District, new environmental staff are required to attend an internal 23-day ''boot camp'' that introduces them to the processes, procedures, and related information needed for their position.

4. The use of a memorandum to the file with a complete explanation of the circumstances and details regarding the ''down-scoping'' of a project from an EIS to an environmental assessment (EA), or from an EA to a CE.

5. Explanatory notes in a project file under one UFS tab stating where the information for that tab is found filed under another tab within the project file.

Findings Definitions

The FHWA audit team carefully examined Pilot Program areas to assess compliance in accordance with established criteria in the MOU and Application. The time period covered by this fourth audit report is from the start of the Caltrans Pilot Program (July 1, 2007) through completion of the third onsite audit (July 31, 2009) with the focus of the audit on the most recent 6 month period. This report presents audit findings in three areas:

- *Compliant*—Audit verified that a process, procedure or other component of the Pilot Program meets a stated commitment in the Application and/or MOU.
- *Needs Improvement*—Audit determined that a process, procedure or other component of the Pilot Program as specified in the Application and/or MOU is not fully implemented to achieve the stated commitment or the process or procedure implemented is not functioning at a level necessary to ensure the stated commitment is satisfied. *Action is recommended to ensure success.*
- *Deficient*—Audit was unable to verify if a process, procedure or other component of the Pilot Program met the stated commitment in the Application and/or MOU. *Action is required to improve the process, procedure or other component prior to the next audit;*

or

Audit determined that a process, procedure or other component of the Pilot Program did not meet the stated commitment in the Application and/or MOU. *Corrective action is required prior to the next audit.*

or

Audit determined that for a past Needs Improvement finding, the rate of corrective action has not proceeded in a timely manner; is not on the path to timely resolution of the finding.

Summary of Findings—July 2009

Compliant

(C1) *Legal Sufficiency Timeline*—Caltrans' Legal Division has developed a consistent process to conduct required legal sufficiency reviews by attorneys (per 23 CFR 771.125(b) and 774.7(d)). Based on interviews with staff and information provided during the audit, legal reviews of NEPA and Section 4(f) of the U.S. DOT Act of 1966 (Section 4(f)) documents appear to be conducted within the times allotted by Caltrans internal performance goals.

Needs Improvement

(N1) *Inadequate Guidance in the SER*—Section 8.2.5 of the MOU requires ''At a minimum, Caltrans' quality control and quality assurance activities will include the review and monitoring of its processes relating to project decisions, environmental analysis, project file documentation, checking for errors and omissions, legal sufficiency reviews, and taking appropriate corrective action as needed.'' Several instances were identified where the guidance provided in the SER was unclear, misleading, or incomplete. This resulted in documents incorrectly completed and/or processes not implemented correctly. Examples of such instances were:

(a) SER Chapter 38 requires that the SEP sign the Environmental Document Review Checklist once it is completed. Review of project files revealed Environmental Document Review Checklists that were either not signed by a Senior Environmental Planner (SEP) or not signed at all. Additionally, different versions of the checklist were found in various project files, none of which designated which signature line was to be completed by the SEP. These various instances of noncompliance with the SER requirement were observed within individual Districts and also from District to District.

(b) SER Chapter 38 guidance does not distinguish between the ''pilot program'' citation required to appear in individual Section 4(f) Evaluations prepared for Section 6005 CE projects and those prepared for Section 6004 CE projects. The statement in the SER regarding the project being carried out by Caltrans under its assumption of responsibility pursuant to 23 U.S.C. 327 is only applicable to Section 4(f) evaluations for Section 6005 CEs under the Pilot

Program. The CEs completed by Caltrans under the Section 6004 CE assumption should refer to 23 U.S.C. 326. Through interviews and project file reviews, confusion about this was identified and, at least in some cases, the apparent misunderstanding that the same language is to be used for both Section 6004 and Section 6005 CEs with individual Section 4(f) evaluations.

(c) SER Chapter 33 discusses the process and documentation for conducting NEPA re-evaluations (to comply with 23 CFR 771.129). The chapter, last updated November 10, 2008, does not provide clear direction on how to process a re-evaluation under the Pilot Program. The chapter includes a reference to a joint FHWA/Caltrans guidance on NEPA consultation and re-evaluation, dated June 21, 2007, that states, ''When the NEPA Pilot Program (NEPA assumption) begins, the joint guidance and the NEPA/CEQA Revalidation form will be revised as necessary.'' The FHWA/Caltrans joint guidance has not been revised to take the Pilot Program into consideration. There is a link to a review form that matches the form contained in the joint FHWA/Caltrans guidance and has FHWA removed as having approval authority; however, there is no guidance on the appropriate use of the form.

(d) SER Chapter 25 references FHWA Order 6640.2 *FHWA Actions to address Environmental Justice in minority and Low-Income Populations;* however, the flowchart and guidance provided in that chapter do not fully reflect the definition of Disproportionately High and Adverse Effect on Minority and Low-Income Populations provided in that Order, nor does it clearly state the need to identify population served and/or affected by race, or national origin, and income level when determining such effects. The SER chapter provides discussion points and some sources for reference material, but does not provide specific guidance to NEPA practitioners for how to integrate a project level review into a NEPA process, to document proposed steps to guard against disproportionately high and adverse effects, or to document meaningful public involvement opportunities and consider the results.

(N2) *Procedural and Substantive Requirements*—MOU Section 5.1.4 states that Caltrans will work with all other appropriate Federal agencies concerning the laws, guidance, and policies that such other Federal agencies are responsible for administering. Areas in need of improvement in working with Federal agencies included:

(a) Through interviews with USACE and USFWS staff located in California, instances were identified where there was confusion as to the implementation of the Endangered Species Act (ESA) Section 7 process and how it is related to the USACE permitting process. Verbal comments were made by resource agency staff that when working on local agency projects, the local project sponsors lacked clarity on the information regarding the ESA Section 7 compliance needed for the USACE permitting process. It was also learned that on more than one occasion, local agencies inappropriately acted as lead agency for ESA Section 7 consultation and Section 404 of the Clean Water Act coordination.

(b) The SER Chapter 38, *Consultation and Coordination with Federal Agencies,* requires Caltrans to include the following specific language in consultation documents being transmitted directly to Federal resource agencies:

> Caltrans is [transmitting/initiating * * * (describe product or action)] as the NEPA lead agency under the provisions of *the Memorandum of Understanding (MOU) between the Federal Highway Administration and the California Department of Transportation Concerning the State of California's Participation in the Surface Transportation Project Delivery Pilot Program,* which became effective on July 1, 2007. The MOU was signed pursuant to Section 6005 of the 2005 Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) which allows the Secretary of Transportation to assign, and the State of California to assume, responsibility for FHWA's responsibilities under other Federal environmental laws. As this project is covered by the Pilot Program MOU, FHWA has assigned and Caltrans has assumed FHWA responsibility for environmental review, consultation, and coordination on this project. Please direct all future correspondence on this project to Caltrans.

A letter in a project file from Caltrans to USFWS requesting initiation of formal ESA Section 7 consultation did not include the required language regarding the responsibilities assumed by Caltrans.

(N3) *Section 4(f) Documentation*—MOU Section 5.1.1 affirms that Caltrans is subject to the same procedural and substantive requirements that apply to the DOT in carrying out the responsibilities assumed under the Pilot Program. Through project file reviews and interviews with Caltrans staff, inconsistencies were identified with the *documentation* required in carrying out the Section 4(f) provisions. These included:

(a) For one project, no documentation was provided in the EA or in the project file to support the assertion that ''[t]emporary uses do not normally constitute 'use' under Section 4(f) policy.'' The FHWA regulation regarding ''temporary occupancies of land,'' 23 CFR 774.13(d), states in pertinent part that there must be documented agreement with the official with jurisdiction over the Section 4(f) resource that the requisite conditions have been met. 23 CFR 774.13(d)(5).

(b) Two project files that together contained inadequate documentation of three potential Section 4(f) resources were identified. Documentation did not fully support statements that these resources were not, in fact, Section 4(f) resources. In one case, the official with jurisdiction even disputed the statement in the environmental document that the subject property was not a Section 4(f) resource and provided information to support a Section 4(f) resource identification. In another document, there was an implied *de minimis* effect by the use of the term; however, no supporting documentation was provided, nor was there any evidence of public involvement or coordination with the officials with jurisdiction over the Section 4(f) resource, as required by 49 U.S.C. 303(d) and 23 CFR 774.7(b).

(c) In four project files reviewed during the audit, documentation did not reflect that the current Section 4(f) regulations are being adhered to in all NEPA processes. In these four projects, references were made to the prior FHWA regulations at 23 CFR 771.135 rather than to the updated regulations at 23 CFR Part 774.

(N4) *Circulation of a Draft Section 4(f) Evaluation*—Project file reviews and interviews with Caltrans staff identified confusion as to the requirements for the circulation of the Section 4(f) Evaluation to the Department of the Interior (DOI) for review. In one instance, Caltrans staff contacted the FHWA Division Office to determine circulation requirements and documentation indicates that the Section 4(f) Evaluation was sent to FHWA for forwarding to DOI.

(N5) *Section 4(f) Implementation*—MOU Section 5.1.1 requires Caltrans to be subject to the same procedural and substantive requirements that apply to the DOT when carrying out the responsibilities it has assumed. Through project file reviews and interviews of Caltrans staff, several inconsistencies with the *implementation and general understanding* required in carrying out the Section 4(f) provisions were identified. These include:

(a) Text in an EA that cited the Section 4(f) ''policy'' should have referred to the Section 4(f) ''regulations.'' The correct citation for this Section 4(f) Evaluation should have been the FHWA regulations, 23 CFR Part 774.

(b) Review of a final Environmental Assessment/Finding of No Significant Impact (EA/FONSI) and project files revealed a lack of understanding regarding the applicability of FHWA's Nationwide Programmatic Section 4(f) evaluation for the rehabilitation or replacement of historic bridges. Under the Programmatic, all five criteria of applicability set forth in this programmatic must be met and the explanation for meeting the criteria must be included in the document and the project file (*http://www.environment.fhwa.dot.gov/projdev/4fbridge.asp*). In addition, the draft EA for this project reached a Section 4(f) conclusion prior to executing the Section 106 MOU with the State Historic Preservation Office.

(N6) *Legal Division Staff*—Caltrans' Legal Division consists of four largely autonomous

offices [2] serving different regions of the State. The MOU section 4.2.2 requires Caltrans ''to obtain adequate * * * staff capability'' including ''without limitation * * * [d]emonstrating, in a consistent manner, the capacity to perform Caltrans' assumed responsibilities under this MOU and applicable Federal laws.'' As noted in a previous audit report, Caltrans maintains a staff of attorneys in each of the four offices trained to support the Pilot Program, and tracks the training each of these attorneys receives related to environmental law. The audit team notes that many of the attorneys assigned to the Pilot Program have a great deal of general legal experience; however, over the life of the Pilot it has become apparent that the four legal offices vary widely when it comes to attorneys with significant experience in Federal environmental law. During this audit, it became clear that this inconsistency increased following the retirement of a highly experienced attorney near the end of 2008. This retirement has resulted in two of Caltrans' legal offices—each of which serves some of Caltrans' largest and busiest Districts—having on staff no attorneys with substantial experience in Federal environmental law. It is the audit team's understanding that legal sufficiency reviews are conducted independently within these autonomous offices, increasing the potential that legal sufficiency reviews may be applied in an inconsistent manner across the State.

(N7) *Training*—Section 4.2.2 of the MOU requires Caltrans to maintain adequate organizational and staff capacity to effectively carry out the responsibilities it has assumed under Section 3 of the MOU. The following inconsistencies were noted during interviews:

(a) Interviews and personnel training record reviews identified two tools used by Caltrans to determine the capacity of Caltrans staff to carry out Pilot Program responsibilities including a Learning Management System (LMS) and Individual Development Plans (IDPs). The audit team observed that these tools, and possibly others, are used in varying ways and with varying success across Districts to (1) identify training needs or gaps in areas of expertise and (2) plan and track the training each employee receives. Given this variation and use of these tools and approaches, it is unclear how District leadership ensures that all Caltrans employees have the capacity to carry out assigned responsibilities assumed under the Pilot Program and how this information can be collected.

(b) Interviews reflected a lack of knowledge in two areas. As is detailed in other portions of this audit report, several instances of inadequate staff capacity for determining compliance process requirements related to the Section 4(f) and ESA Section 7 processes were observed during this audit. This is an example of a needed competency that does not appear to be being met and/or being tracked. As was also noted earlier in this report, there is varying understanding of the re-evaluation process and requires additional training for staff to be competent in the understanding of this process.

(c) As the demand for and use of online training courses increases, there is currently no consistent method for Caltrans to track which employees have completed online training courses and to incorporate this information into the LMS and into the employee IDPs. In order to ensure that Caltrans employees implementing NEPA duties have the knowledge and skills to assume the responsibilities under Section 3 of the MOU, Caltrans should begin to track this information and also determine which online training courses should be prerequisites for performing certain NEPA assumption activities.

(N8) *Maintenance of Project and General Administrative Files*—Section 8.2.4 of the MOU requires Caltrans to maintain project and general administrative files pertaining to its discharge of the responsibilities assumed under the Pilot Program. Caltrans has instituted specific procedures for maintaining project files and has provided training on these procedures. Inconsistencies in the application of these procedures, reported in previous audit findings, were also identified in this audit. Inconsistencies in 12 of the 47 project files reviewed during the audit, including:

(a) Required project documentation was missing from several project files. Examples of missing documentation included: a Biological Opinion; ESA Section 7 concurrence documentation; internal and external communications related to the project; letters from the District Local Agency Engineer to the local agency transmitting the Preliminary Environmental Study form with the list of the required technical studies for the project; and noise abatement decision report.

(b) Some required file documentation missing from project files was eventually located elsewhere in the District Office. Examples of items missing from the project file, but brought to auditors upon request, included cooperating agencies' letters, FHWA project level air quality conformity determinations, Caltrans' noise abatement decision reports, a project's Section 106 MOA, and evidence of the circulation of Section 4(f) documents to the DOI. Required documentation could not be located during the audit.

(c) The required documentation according to 23 CFR 771.111(h)(2)(vi), which states that the State must provide ''transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered'' could not be located during the audit. In two instances, the public hearing transcript was not found nor was any certification (or other documentation) that a hearing had been held.

(d) In several instances, project files were missing required UFS tabs (though they contained pertinent documentation) and some sections contained no information or explanation as to why the tabs were missing or tab sections were empty.

(N9) *Varying Oversight/Analysis of Commitment of Resources*—Section 4.2.2 of the MOU requires that ''Caltrans will maintain adequate organizational and staff capability, including competent and qualified consultants where necessary or desirable, to effectively carry out the responsibilities it has assumed under part 3 of this MOU. This includes, without limitation:

- Using appropriate environmental technical and managerial expertise;
- Devoting adequate staff resources; and
- Demonstrating, in a consistent manner, the capacity to perform Caltrans' assumed responsibilities under this MOU and applicable Federal laws.''

Previous audits have tried to determine how Caltrans monitors its resources to implement the Pilot Program, but based on audit interviews, were unable to identify a uniform process. Through interviews and material reviewed during this audit, it was determined that the existing system used by Caltrans to track resources showed inconsistent use of billing codes and in one case identified an error not previously found by Caltrans. During the interviews with Caltrans environmental personnel, inconsistencies continued to be identified in the reporting and use of these Pilot Program codes. These inconsistencies include:

(a) Lack of familiarity with the activities eligible to be billed to the Pilot Program,

(b) Lack of supervisory direction as to what activities should be billed to the Pilot Program;

(c) Failure to report all times eligible for billing under the appropriate codes for both Capital and Local Assistance programs (codes 6DELE and 6LADELE, respectively);

(d) Varying degrees of oversight, or no oversight of the billing codes for the Pilot Program performed in the Districts.

Deficient

(D1) *Quality Control Quality (QA/QC) Assurance*—Under the Pilot Program, and as reflected in the language cited on each environmental document assigned to Caltrans per MOU Section 3.2.5, NEPA documentation should reflect that FHWA has no role in the environmental review and decisionmaking process for assigned projects. Through project file and document reviews, three instances were observed where in a document or in the project file, there were references to FHWA being involved in the decisionmaking process.

(D2) *QA/QC Certification Process*—Section 8.2.5 of the MOU and SER Chapter 38 require Caltrans staff to review each environmental document in accordance with the policy memorandum titled ''Environmental Document Quality Control Program under the NEPA Pilot Program'' (July 2, 2007). Incomplete and incorrectly completed QC certification forms continue to be identified. Five of the seven identified instances occurred in 2008. Examples of these are:

(a) Four instances in which review signatures on QA/QC forms were not obtained the proper sequence in accordance with the Caltrans established QA/QC processes;

(b) Three project files where QA/QC forms were either incomplete or missing.

(D3) *Quarterly Reporting*—MOU Section 8.2.7 requires Caltrans to submit a report to FHWA each quarter for the first 2 years of

[2] The four offices are located in Sacramento, San Francisco, Los Angeles, and San Diego.

Pilot program listing all approvals and decisions Caltrans makes with respect to responsibilities assumed under the MOU. Quarterly reports submitted by Caltrans for the first eight quarters of Pilot program participation were reviewed for this audit. Each of the first seven quarterly reports has been revised; some reports have been revised multiple times. In summary, for the first seven quarterly reports, a total of 63 new projects were added in report revisions and 29 projects initially reported were subsequently deleted. The reporting issues spanned across the majority of districts reporting projects, and seven districts submitted revisions to four or more quarterly reports. Inaccurate project reporting has been a consistent issue affecting the quarterly report process and has been identified in previous FHWA audit reports. Among the errors discovered were reporting errors related to incorrectly characterizing projects (*e.g.,* CEs under Section 6004 and Section 6005), and omissions associated with untimely reporting of project approvals and decisions by district staff (*i.e.,* a subsequent quarterly report included a project that was approved in the previous quarter). The approach used by each district to collect project information for the quarterly reports is highly variable and is one key contributor to continued reporting inaccuracies.

The current Caltrans approach to developing the quarterly reports continues to be deficient. The accuracy of the reports on project approvals and decisions affects FHWA oversight of the Pilot Program. For example, if Caltrans does not report to FHWA a project being administered under the Pilot Program, the project may not be included in the audit process. Additionally, now that the FHWA onsite audit process will move to an annual basis (semi-annual audits were required during the first 2 years of the Pilot Program), the project approval and decision reporting takes on increased significance as less in-field auditing will occur.

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DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the ''agencies'') may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. On August 19, 2009, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on a proposal to extend, with revision, the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. After considering the comments received on the proposal, the FFIEC and the agencies will proceed with most of the reporting changes with some limited modifications in response to the comments.

DATES: Comments must be submitted on or before January 22, 2010.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You should direct all written comments to: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 2–3, Attention: 1557–0081, 250 E Street, SW., Washington, DC 20219. In addition, comments may be sent by fax to (202) 874–5274, or by electronic mail to *regs.comments@occ.treas.gov*. You may personally inspect and photocopy comments at the OCC, 250 E Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Board: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 7100–0036,'' by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov*. Include the OMB control number in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to ''Consolidated Reports of Condition and Income, 3064–0052,'' by any of the following methods:

- *Agency Web Site: http://www.fdic.gov/regulations/laws/federal/propose.html*. Follow the instructions for submitting comments on the FDIC Web site.
- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: comments@FDIC.gov*. Include ''Consolidated Reports of Condition and Income, 3064–0052'' in the subject line of the message.
- *Mail:* Gary Kuiper (202–898–3877), Counsel, Attn: Comments, Room F–1072, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW., Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions